

AMENDED IN ASSEMBLY MAY 6, 2003

AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1580**

**Introduced by Assembly Member Cogdill ~~Members Cogdill and Dutton~~**

**(Coauthors: Assembly Members Benoit, Cox, Houston, Maze, McCarthy, and Runner)**

**(Coauthors: Senators Battin, Johnson, and Margett)**

February 21, 2003

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~~An act to amend Sections 3351, 3352, and 3363.5 of, and to repeal Sections 3370 and 3371 of, the Labor Code, and to amend Sections 2601, 4017, and 4024.2 of, and to repeal Section 5069 of, the~~ *An act to amend Sections 3352 and 3363.5 of the Labor Code, and to amend Sections 4017 and 4024.2 of the Penal Code, relating to workers' compensation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1580, as amended, Cogdill. Workers' compensation: ~~state and~~ local inmates.

~~Existing law requires that each inmate of a state penal or correctional institution be entitled to workers' compensation benefits for an injury arising out of, and in the course of, assigned employment and for the death of the inmate if the injury proximately causes death, subject to prescribed conditions. Existing law requires the Administrative Director of the Division of Workers' Compensation to formulate procedures for the selection and orderly referral of injured inmates of~~

~~state penal or correctional institutions who may be benefited by rehabilitation services and retrained for other positions upon release from incarceration.~~

~~This bill would repeal these requirements and would make conforming changes.~~

Existing law provides that whenever certain persons confined in the county or city jail suffer injuries or death while working in the prevention or suppression of forest, brush, or grass fires, he or she shall be considered to be an employee of the county or city, respectively, for purposes of workers' compensation. Existing law further provides that, as a condition of assigning participants of a work release program to perform manual labor in support of nonprofit organizations, the board of supervisors of any county shall obtain workers' compensation insurance to cover work-related injuries incurred by those participants.

This bill would delete these provisions.

Existing law excludes various persons from the definition of employee for purposes of workers' compensation.

This bill would exclude from this definition certain persons confined in the county or city jail, regardless of whether the services performed are on a voluntary or involuntary basis, and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1. — Section 3351 of the Labor Code is amended to~~
- 2    ~~read:~~
- 3    ~~3351. — "Employee" means every person in the service of an~~
- 4    ~~employer under any appointment or contract of hire or~~
- 5    ~~apprenticeship, express or implied, oral or written, whether~~
- 6    ~~lawfully or unlawfully employed, and includes all of the~~
- 7    ~~following:~~
- 8    ~~(a) Aliens and minors.~~
- 9    ~~(b) All elected and appointed paid public officers.~~
- 10   ~~(c) All officers and members of boards of directors of~~
- 11   ~~quasi-public or private corporations while rendering actual service~~
- 12   ~~for the corporations for pay; provided that, where the officers and~~
- 13   ~~directors of the private corporation are the sole shareholders of the~~
- 14   ~~corporation, the corporation and the officers and directors shall~~



1 ~~come under the compensation provisions of this division only by~~  
2 ~~election as provided in subdivision (a) of Section 4151.~~

3 ~~(d) Except as provided in subdivision (h) of Section 3352, any~~  
4 ~~person employed by the owner or occupant of a residential~~  
5 ~~dwelling whose duties are incidental to the ownership,~~  
6 ~~maintenance, or use of the dwelling, including the care and~~  
7 ~~supervision of children, or whose duties are personal and not in the~~  
8 ~~course of the trade, business, profession, or occupation of the~~  
9 ~~owner or occupant.~~

10 ~~(e) All working members of a partnership or limited liability~~  
11 ~~company receiving wages irrespective of profits from the~~  
12 ~~partnership or limited liability company; provided that where the~~  
13 ~~working members of the partnership or limited liability company~~  
14 ~~are general partners or managers, the partnership or limited~~  
15 ~~liability company and the partners or managers shall come under~~  
16 ~~the compensation provisions of this division only by election as~~  
17 ~~provided in subdivision (a) of Section 4151. If a private~~  
18 ~~corporation is a general partner or manager, “working members~~  
19 ~~of a partnership or limited liability company” shall include the~~  
20 ~~corporation and the officers and directors of the corporation;~~  
21 ~~provided that the officers and directors are the sole shareholders~~  
22 ~~of the corporation. If a limited liability company is a partner or~~  
23 ~~member, “working members of the partnership or limited liability~~  
24 ~~company” shall include the managers of the limited liability~~  
25 ~~company.~~

26 ~~(f) For the purposes of subdivisions (e) and (e), the persons~~  
27 ~~holding the power to revoke a trust as to shares of a private~~  
28 ~~corporation or as to general partnership or limited liability~~  
29 ~~company interests held in the trust, shall be deemed to be the~~  
30 ~~shareholders of the private corporation, or the general partners of~~  
31 ~~the partnership, or the managers of the limited liability company.~~

32 ~~SEC. 2.—~~

33 *SECTION 1.* Section 3352 of the Labor Code is amended to  
34 read:

35 3352. “Employee” excludes the following:

36 (a) Any person defined in subdivision (d) of Section 3351 who  
37 is employed by his or her parent, spouse, or child.

38 (b) Any person performing services in return for aid or  
39 sustenance only, received from any religious, charitable, or relief  
40 organization.

1 (c) Any person holding an appointment as deputy clerk or  
2 deputy sheriff appointed for his or her own convenience, and who  
3 receives no compensation from the county or municipal  
4 corporation or from the citizens thereof for his or her services as  
5 the deputy. This exclusion is operative only as to employment by  
6 the county or municipal corporation and does not deprive any  
7 person so deputized from recourse against a private person  
8 employing him or her for injury occurring in the course of and  
9 arising out of the employment.

10 (d) Any person performing voluntary services at or for a  
11 recreational camp, hut, or lodge operated by a nonprofit  
12 organization, exempt from federal income tax under Section  
13 101(6) of the Internal Revenue Code, of which he or she or a  
14 member of his or her family is a member and who receives no  
15 compensation for those services other than meals, lodging, or  
16 transportation.

17 (e) Any person performing voluntary service as a ski patrolman  
18 who receives no compensation for those services other than meals  
19 or lodging or the use of ski tow or ski lift facilities.

20 (f) Any person employed by a ski lift operator to work at a snow  
21 ski area who is relieved of and not performing any prescribed  
22 duties, while participating in recreational activities on his or her  
23 own initiative.

24 (g) Any person, other than a regular employee, participating in  
25 sports or athletics who receives no compensation for the  
26 participation other than the use of athletic equipment, uniforms,  
27 transportation, travel, meals, lodgings, or other expenses  
28 incidental thereto.

29 (h) Any person defined in subdivision (d) of Section 3351 who  
30 was employed by the employer to be held liable for less than 52  
31 hours during the 90 calendar days immediately preceding the date  
32 of the injury for injuries, as defined in Section 5411, or during the  
33 90 calendar days immediately preceding the date of the last  
34 employment in an occupation exposing the employee to the  
35 hazards of the disease or injury for injuries, as defined in Section  
36 5412, or who earned less than one hundred dollars (\$100) in wages  
37 from the employer during the 90 calendar days immediately  
38 preceding the date of the injury for injuries, as defined in Section  
39 5411, or during the 90 calendar days immediately preceding the  
40 date of the last employment in an occupation exposing the



1 employee to the hazards of the disease or injury for injuries, as  
2 defined in Section 5412.

3 (i) Any person performing voluntary service for a public  
4 agency or a private, nonprofit organization who receives no  
5 remuneration for the services other than meals, transportation,  
6 lodging, or reimbursement for incidental expenses.

7 (j) Any person, other than a regular employee, performing  
8 officiating services relating to amateur sporting events sponsored  
9 by any public agency or private, nonprofit organization, who  
10 receives no remuneration for these services other than a stipend for  
11 each day of service no greater than the amount established by the  
12 Department of Personnel Administration as a per diem expense for  
13 employees or officers of the state. The stipend shall be presumed  
14 to cover incidental expenses involved in officiating, including, but  
15 not limited to, meals, transportation, lodging, rule books and  
16 courses, uniforms, and appropriate equipment.

17 (k) Any student participating as an athlete in amateur sporting  
18 events sponsored by any public agency, public or private nonprofit  
19 college, university or school, who receives no remuneration for the  
20 participation other than the use of athletic equipment, uniforms,  
21 transportation, travel, meals, lodgings, scholarships,  
22 grants-in-aid, or other expenses incidental thereto.

23 (l) Any law enforcement officer who is regularly employed by  
24 a local or state law enforcement agency in an adjoining state and  
25 who is deputized to work under the supervision of a California  
26 peace officer pursuant to paragraph (4) of subdivision (a) of  
27 Section 832.6 of the Penal Code.

28 (m) Any law enforcement officer who is regularly employed by  
29 the Oregon State Police, the Nevada Department of Motor  
30 Vehicles and Public Safety, or the Arizona Department of Public  
31 Safety and who is acting as a peace officer in this state pursuant to  
32 subdivision (a) of Section 830.32 of the Penal Code.

33 (n) Any person, other than a regular employee, performing  
34 services as a sports official for an entity sponsoring an  
35 intercollegiate or interscholastic sports event, or any person  
36 performing services as a sports official for a public agency, public  
37 entity, or a private nonprofit organization, which public agency,  
38 public entity, or private nonprofit organization sponsors an  
39 amateur sports event. For purposes of this subdivision, “sports  
40 official” includes an umpire, referee, judge, scorekeeper,

1 timekeeper, or other person who is a neutral participant in a sports  
2 event.

3 (o) Any person confined in the county jail, industrial farm, road  
4 camp, or city jail under a final judgment of imprisonment rendered  
5 in a criminal action or proceeding, or confined as a condition of  
6 probation after suspension of imposition of a sentence or  
7 suspension of execution of sentence, including any person on a  
8 work release program, regardless of whether the services  
9 performed are on a voluntary or involuntary basis.

10 ~~SEC. 3.—~~

11 *SEC. 2.* Section 3363.5 of the Labor Code is amended to read:

12 3363.5. (a) Notwithstanding Sections 3351, 3352, and 3357,  
13 a person who performs voluntary service without pay for a public  
14 agency, as designated and authorized by the governing body of the  
15 agency or its designee, shall, upon adoption of a resolution by the  
16 governing body of the agency so declaring, be deemed to be an  
17 employee of the agency for purposes of this division while  
18 performing that service.

19 (b) For purposes of this section, “voluntary service without  
20 pay” shall include services performed by any person, who receives  
21 no remuneration other than meals, transportation, lodging, or  
22 reimbursement for incidental expenses.

23 (c) This section shall not apply to any person confined in a  
24 county or city jail, including a person on a work release program,  
25 who performs voluntary service without pay for a public agency.

26 ~~SEC. 4.—Section 3370 of the Labor Code is repealed.~~

27 ~~SEC. 5.—Section 3371 of the Labor Code is repealed.~~

28 ~~SEC. 6.—Section 2601 of the Penal Code is amended to read:~~

29 ~~2601.—Subject only to the provisions of that section, each~~  
30 ~~person described in Section 2600 shall have the following civil~~  
31 ~~rights:~~

32 ~~(a) Except as provided in Section 2225 of the Civil Code, to~~  
33 ~~inherit, own, sell, or convey real or personal property, including~~  
34 ~~all written and artistic material produced or created by the person~~  
35 ~~during the period of imprisonment. However, to the extent~~  
36 ~~authorized in Section 2600, the Department of Corrections may~~  
37 ~~restrict or prohibit sales or conveyances that are made for business~~  
38 ~~purposes.~~

39 ~~(b) To correspond, confidentially, with any member of the~~  
40 ~~State Bar or holder of public office, provided that the prison~~

~~authorities may open and inspect incoming mail to search for contraband.~~

~~(e) (1) To purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office. Pursuant to this section, prison authorities may exclude any of the following matter:~~

~~(A) Obscene publications or writings, and mail containing information concerning where, how, or from whom this matter may be obtained.~~

~~(B) Any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.~~

~~(C) Any matter concerning gambling or a lottery.~~

~~(2) Nothing in this section shall be construed as limiting the right of prison authorities to do the following:~~

~~(A) Open and inspect any and all packages received by an inmate.~~

~~(B) Establish reasonable restrictions as to the number of newspapers, magazines, and books that the inmate may have in his or her cell or elsewhere in the prison at one time.~~

~~(d) To initiate civil actions, subject to a three dollar (\$3) filing fee to be collected by the Department of Corrections, in addition to any other filing fee authorized by law, and subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.~~

~~(e) To marry.~~

~~(f) To create a power of appointment.~~

~~(g) To make a will.~~

~~SEC. 7.—~~

*SEC. 3.* Section 4017 of the Penal Code is amended to read:

4017. (a) All persons confined in the county jail, industrial farm, road camp, or city jail under a final judgment of imprisonment rendered in a criminal action or proceeding and all persons confined in the county jail, industrial farm, road camp, or city jail as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence may be required by an order of the board of supervisors or city council to perform labor on the public works or ways in the county or city, respectively, and to engage in the prevention and suppression of forest, brush, and grass fires upon lands within the county or city, respectively, or upon lands in adjacent counties where the



1 suppression of fires would afford fire protection to lands within the  
2 county.

3 (b) This work shall be performed under the direct supervision  
4 of a local, state, or federal employee whose duties include fire  
5 prevention and suppression work. A regularly employed member  
6 of an organized fire department shall not be required to directly  
7 supervise more than 20 of those persons in custody.

8 (c) As used in this section, “labor on the public works”  
9 includes clerical and menial labor in the county jail, industrial  
10 farm, camps maintained for the labor of those persons upon the  
11 ways in the county, or city jail.

12 ~~SEC. 8.~~—

13 *SEC. 4.* Section 4024.2 of the Penal Code is amended to read:

14 4024.2. (a) Notwithstanding any other law, the board of  
15 supervisors of any county may authorize the sheriff or other  
16 official in charge of county correctional facilities to offer a  
17 voluntary program under which any person committed to the  
18 facility may participate in a work release program pursuant to  
19 criteria described in subdivision (b), in which one day of  
20 participation will be in lieu of one day of confinement.

21 (b) The criteria for a work release program are the following:

22 (1) The work release program shall consist of any of the  
23 following:

24 (A) Manual labor to improve or maintain levees or public  
25 facilities, including, but not limited to, streets, parks, and schools.

26 (B) Manual labor in support of nonprofit organizations, as  
27 approved by the sheriff or other official in charge of the  
28 correctional facilities.

29 (C) Performance of graffiti cleanup for local governmental  
30 entities, including participation in a graffiti abatement program as  
31 defined in subdivision (f) of Section 594, as approved by the  
32 sheriff or other official in charge of the correctional facilities.

33 (D) Performance of weed and rubbish abatement on public and  
34 private property pursuant to Chapter 13 (commencing with  
35 Section 39501) of Division 3 of Title 4 of the Government Code,  
36 or Part 5 (commencing with Section 14875) or Part 6  
37 (commencing with Section 14930) of Division 12 of the Health  
38 and Safety Code, as approved by the sheriff or other official in  
39 charge of the correctional facilities.





1 (E) Performance of house repairs or yard services for senior  
2 citizens and the performance of repairs to senior centers through  
3 contact with local senior service organizations, as approved by the  
4 sheriff or other official in charge of the correctional facilities.  
5 Where a work release participant has been assigned to this task, the  
6 sheriff or other official shall agree upon in advance with the senior  
7 service organization about the type of services to be rendered by  
8 the participant and the extent of contact permitted between the  
9 recipients of these services and the participant.

10 (F) Any person who is not able to perform manual labor as  
11 specified in this paragraph because of a medical condition,  
12 physical disability, or age, may participate in a work release  
13 program involving any other type of public sector work that is  
14 designated and approved by the sheriff or other official in charge  
15 of county correctional facilities.

16 (2) The sheriff or other official may permit a prisoner  
17 participating in a work release program to receive work release  
18 credit for participation in education, vocational training, or  
19 substance abuse programs in lieu of performing labor in a work  
20 release program on an hour-for-hour basis. However, credit for  
21 that participation may not exceed one-half of the hours established  
22 for the work release program, and the remaining hours shall  
23 consist of manual labor described in paragraph (1).

24 (3) The work release program shall be under the direction of a  
25 responsible person appointed by the sheriff or other official in  
26 charge.

27 (4) (A) The hours of labor to be performed pursuant to this  
28 section shall be uniform for all persons committed to a facility in  
29 a county and may be determined by the sheriff or other official in  
30 charge of county correctional facilities, and each day shall be a  
31 minimum of 8 and a maximum of 10 hours, in accordance with the  
32 normal working hours of county employees assigned to supervise  
33 the programs. However, reasonable accommodation may be made  
34 for participation in a program under paragraph (2).

35 (B) As used in this section, “nonprofit organizations” means  
36 organizations established or operated for the benefit of the public  
37 or in support of a significant public interest, as set forth in Section  
38 501(c)(3) of the Internal Revenue Code. Organizations established  
39 or operated for the primary purpose of benefiting their own  
40 memberships are specifically excluded.

1 (c) (1) The board of supervisors may prescribe reasonable  
2 rules and regulations under which a work release program is  
3 operated and may provide that participants wear clothing of a  
4 distinctive character while performing the work. As a condition of  
5 participating in a work release program, a person shall give his or  
6 her promise to appear for work or assigned activity by signing a  
7 notice to appear before the sheriff or at the education, vocational,  
8 or substance abuse program at a time and place specified in the  
9 notice and shall sign an agreement that the sheriff may  
10 immediately retake the person into custody to serve the balance of  
11 his or her sentence if the person fails to appear for the program at  
12 the time and place agreed to, does not perform the work or activity  
13 assigned, or for any other reason is no longer a fit subject for  
14 release under this section. A copy of the notice shall be delivered  
15 to the person and a copy shall be retained by the sheriff. Any person  
16 who willfully violates his or her written promise to appear at the  
17 time and place specified in the notice is guilty of a misdemeanor.

18 (2) Whenever a peace officer has reasonable cause to believe  
19 the person has failed to appear at the time and place specified in  
20 the notice or fails to appear or work at the time and place agreed  
21 to or has failed to perform the work assigned, the peace officer  
22 may, without a warrant, retake the person into custody, or the court  
23 may issue an arrest warrant for the retaking of the person into  
24 custody, to complete the remainder of the original sentence. A  
25 peace officer may not retake a person into custody under this  
26 subdivision, without a warrant for arrest, unless the officer has a  
27 written order to do so, signed by the sheriff or other person in  
28 charge of the program, that describes with particularity the person  
29 to be retaken.

30 (d) (1) Nothing in this section shall be construed to require the  
31 sheriff or other official in charge to assign a person to a program  
32 pursuant to this section if it appears from the record that the person  
33 has refused to satisfactorily perform as assigned or has not  
34 satisfactorily complied with the reasonable rules and regulations  
35 governing the assignment or any other order of the court.

36 (2) A person shall be eligible for work release under this section  
37 only if the sheriff or other official in charge concludes that the  
38 person is a fit subject therefor.

39 (e) The board of supervisors may prescribe a program  
40 administrative fee, not to exceed the pro rata cost of

- 1 administration, to be paid by each person according to his or her
- 2 ability to pay.
- 3 ~~SEC. 9. Section 5069 of the Penal Code is repealed.~~

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